



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1996

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711

OR96-1932

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101341.

The Comptroller of Public Accounts (the "comptroller") received two requests for information relating to a particular franchise tax audit. You state that the comptroller will release most of the requested information. However, you claim that the last two categories of the first request and the information sought in the second request are excepted from disclosure under section 552.101 of the Government Code. You also claim that the comptroller does not have the information in the form sought in the second request. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 111.006(a)(2) of the Tax Code provides:

(a) Except as provided by Subsection (d), the following matter is confidential and may not be used publicly, opened to public

¹It appears that the information sought in the second request is merely a combination of the information sought in the last two categories of the first request. The comptroller states that it does not have the information in the form requested in the second request. The Open Records Act does not ordinarily require a governmental body to take affirmative steps to create or obtain information that is not in its possession or to prepare information in a form requested by a member of the public. Open Records Decision Nos. 534 (1989), 467 (1987); *but see* Gov't Code § 552.231 (requiring programming or manipulation of data in response to request for information in certain circumstances). We conclude that the comptroller need not respond to the second request.

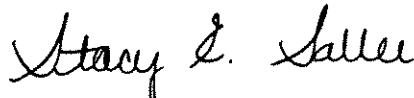
inspection, or disclosed except as permitted under Subsection (b)² of this section:

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(2) (footnote added). This provision makes confidential information obtained or derived from taxpayers. *See A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995). You claim that "[t]he penalty amount and interest amount were both calculated from the tax deficiency amount. In this way, the amounts of penalty and interest are derived from taxpayer-provided information." We agree. Therefore, the comptroller must withhold the requested information under section 111.006(a)(2) as applied through section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 101341

Enclosures: - Submitted documents

cc: Mr. Hugh L. Tollack II
7139 Tabor Drive
Dallas, Texas 75231
(w/o enclosures)

²Subsections (b) and (d) are not relevant to the disposition of this open records request.